

THE HONORABLE SAMULE J. STEINER  
Chapter 7

Hearing Date: February 26, 2010

Hearing Time: 9:30 a.m.

Response Date: February 19, 2010

Hearing Location: Seattle, WA

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re:

ROSEMARY ANN FERREIRA and CARLOS  
A. FERREIRA, fdba Afix Corp.

Debtors.

Bankruptcy Case No. 2:09-bk-23053  
Chapter 7 proceeding

**OBJECTION BY ANN BEEMAN  
ARCHITECTS TO MOTION FOR  
RELIEF FROM STAY**

**I. INTRODUCTION**

Ann Beeman Architects is a secured creditor in the real property located at 9202 NE 120<sup>th</sup> Street, Kirkland, WA 98033, hereinafter the "9202 NE 120<sup>th</sup> Street Property."  
(Declaration of Ann Beeman in Support of Objection to Motion for Relief from Stay, hereinafter "Beeman Dec.," at ¶¶3 and 4, and Exhibits A and B thereto.) Because H & C's motion for relief from stay seriously understates the value of the 9202 NE 120<sup>th</sup> Street Property, an order granting relief from stay would improperly impair the value of a central asset of the estate for Beeman Architects, the debtor and the estate's unsecured creditors. For this reason, Beeman Architects asks the Court to deny the pending motion.

**OBJECTION BY ANN BEEMAN ARCHITECTS  
TO MOTION FOR RELIEF FROM STAY - 1**

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Instead, Beeman Architects asks the Court to direct the trustee to list the 9202 NE 120<sup>th</sup> Street Property for sale, with any sale subject to the approval of this Court, so that the value added from recent development activities can be fully realized for all concerned. If the 9202 NE 120<sup>th</sup> Street Property is sold in that manner, it is Beeman Architects' opinion, more probably than not, that that property will produce sufficient value to pay the \$1,259,530.58 owed to the three secured creditors, and further, to provide the debtors and/or unsecured creditors with value as well.

## II. ARGUMENT

**A. H & C INTERNATIONALE UNDERVALUES THE 9202 NE 120<sup>TH</sup> STREET PROPERTY**

Ann Beeman is a registered architect authorized to practice her profession in the state of Washington. Ann Beeman Architects performed a wide variety of services for the debtors herein with respect to the planned development of the real property located at 9202 NE 120<sup>th</sup> Street, Kirkland, WA 98033 (hereinafter the “9202 NE 120<sup>th</sup> Street Property”). (Beeman Dec., ¶¶1-3.) To secure the payment of the debt incurred as a result of that work, debtor Ann Ferriera signed a promissory note in favor of Ann Beeman Architects in the face amount of \$16,223.50. (Beeman Dec., ¶3, Exhibit A.) That promissory note was secured by a Deed of Trust recorded on the 9202 NE 120<sup>th</sup> Street Property on January 14, 2009. (Beeman Dec., ¶4, Exhibit B.)

In its motion for relief from stay, H & C Internationale, Ltd., rejects the debtors’ estimated value of \$1,500,000 for the 9202 NE 120<sup>th</sup> Street Property. It asserts instead that “[u]pon H & C’s investigation the property located at 9202 NE 120<sup>th</sup> Street, Kirkland, Washington has an assessed value of \$838,000.” (Beeman Dec., ¶5.)

H & C attaches no documentary evidence to support its statement that the 9202 NE 120<sup>th</sup> Street Property has an assessed value of \$838,000, so Ms. Beeman not know if that statement is an accurate reflection of the assessed value for all, some or none of the land

## OBJECTION BY ANN BEEMAN ARCHITECTS TO MOTION FOR RELIEF FROM STAY - 2

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1 encompassed by the 9202 NE 120<sup>th</sup> Street Property. (Beeman Dec., ¶6.) Put in legal terms, H  
2 & C's factual assertion of the value of the 9202 NE 120<sup>th</sup> Street Property lacks foundation and  
3 is inadmissible.

4 Based on Ms. Beeman's personal work on the 9202 NE 120<sup>th</sup> Street Property, and on  
5 her experience as a registered architect, she has the factual and professional basis upon which  
6 to respond to H & C's unsupported contention of value. Specifically, she concludes based  
7 upon her personal information and professional experience that H & C's assertion of value is  
8 understated for the following reasons:

- 9 a. Substantial work was performed to develop the 9202 NE 120<sup>th</sup> Street Property  
10 that is not reflected in the assessed value. For instance, the site was subdivided  
11 into three properties and additional square footage was added to the  
12 westernmost parcel along the west property line, amounting to ~15 feet times  
13 the length of the property. H & C's motion does not reflect whether it has  
14 taken that added value into account.
- 15 b. A number of experts, including geotech, civil and environmental engineers,  
16 and a surveyor were hired to and did provide documentation for development  
17 of the site. That existing documentation adds substantial value to the 9202 NE  
18 120<sup>th</sup> Street Property, which does not appear to be reflected in H & C's motion.
- 19 c. Ms. Beeman's company was hired, access and building sites were identified,  
20 and site planning for the two undeveloped parcels was provided, as well as  
21 more detailed plans for a 7000 square foot house with pool and 3 car garage on  
22 the westernmost parcel. The site planning for a similar development was  
23 provided for the middle parcel. H & C's motion does not reflect whether it has  
24 taken that added value into account.

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**OBJECTION BY ANN BEEMAN ARCHITECTS  
TO MOTION FOR RELIEF FROM STAY - 3**

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1 d. Access routes for fire protection services were identified for each parcel. The  
2 value of that service, as with all of the other items discussed above, would not  
3 in Ms. Beeman's opinion be reflected in the assessed value asserted by H & C.

4 e. The site slopes to the south with views of Lake Washington, and it is located in  
5 an extremely desirable area. It is a unique site with opportunities for high-end  
6 custom development that in substantial respect has already been performed.

7 (Beeman Dec., ¶7.)

8 All of the above leads Ms. Beeman and Beeman Architects to conclude that H & C's  
9 motion for relief from stay seriously underestimates the value of the 9202 NE 120<sup>th</sup> Street  
10 Property. In Ms. Beeman's opinion, the property should be put on the market under the  
11 supervision of this Court, packaged together with all of the value provided by the professional  
12 services supplied to date, to maximize the value received by the debtors' creditors. If the  
13 9202 NE 120<sup>th</sup> Street Property is sold in that manner, it is in Ms. Beeman's opinion more  
14 probable than not that that property will produce sufficient value to pay the \$1,259,530.58  
15 owed to the three secured creditors, and further, to provide the debtors and/or unsecured  
16 creditors with value as well. (Beeman Dec., ¶8.)

17 **B. H & C INTERNATIONALE'S MOTION FOR RELIEF FROM STAY FAILS**  
18 **TO COMPLY WITH BLR 4001-1(c)**

19 Bankruptcy Local Rule 4001(c) states in part that "[w]here equity in real property is  
20 an issue, the motion and notice of motion shall contain a legal description and a common  
21 address." While H & C provided the Court and parties with the common address of the  
22 property, it failed to comply with the requirement to provide a legal description in its motion  
23 and notice of motion.

24 This failure to comply with Bankruptcy Local Rule 4001(c) is not an empty formality,  
25 but instead is a reflection of the fundamental problems with the motion for relief from stay.  
26 For instance, by failing to specify which of the eight or more tax parcels it seeks to foreclose

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1 on,<sup>1</sup> H & C makes it impossible to know if Ms. Beeman's concern regarding inclusion of all  
2 value for all of the real property is provided in H & C's factually-unsupported statement of  
3 the tax-assessed value. Likewise, by failing to be specific, H & C makes it impossible for the  
4 Court or the interested parties to determine if the value of the 9202 NE 120<sup>th</sup> Street Property  
5 could be maximized through division and separate sale or foreclosure.

6 **III. CONCLUSION**

7 For all of the above reasons, the motion for relief from stay should be denied.

8 DATED this 18th day of February, 2010.

9 KINSEL LAW OFFICES

10  
11 By: /s/ William A. Kinsel  
12 William A. Kinsel, WSBA #18077  
13 Attorney for Ann Beeman Architects, Inc.

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26 <sup>1</sup> The deed of trust, at Dk #15-2, page 2 of 5, lists eight tax parcel identification numbers.

**OBJECTION BY ANN BEEMAN ARCHITECTS  
TO MOTION FOR RELIEF FROM STAY - 5**

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused to be served the foregoing Objection by Ann Beeman  
3 Architects to Motion for Relief from Stay on:

4 Rosemary Ann and Carlos A. Ferreira  
5 9202 NE 120<sup>th</sup> St  
6 Kirkland, WA 98034

7 Debtors

8 Christina Latta Henry  
9 Seattle Debt Law LLC  
705 2<sup>nd</sup> Ave, Ste 1050  
Seattle, WA 98104

10 Attorney for Debtor

11 U.S. Trustee  
12 700 Stewart Street, Suite 5103  
Seattle, WA 98101

13 Office of the U.S. Trustee

14 Ronald G. Brown  
15 999 3<sup>rd</sup> Ave, Ste 2525  
Seattle, WA 98104

16 Chapter 7 Trustee

17  
18 by mailing said persons full, true, and correct copies thereof. I further certify that said copies  
19 were contained in sealed envelopes with postage thereon prepaid, addressed as above-stated to  
20 the last-known addresses of said persons, and deposited in the U.S. Mail at Seattle,  
21 Washington on the 18th day of February, 2010.

22 KINSEL LAW OFFICES

23  
24 By: /s/ William A. Kinsel  
25 William A. Kinsel, WSBA #18077  
26 Attorney for Ann Beeman Architects, Inc.  
Email: wak@kinsellaw.com

**OBJECTION BY ANN BEEMAN ARCHITECTS  
TO MOTION FOR RELIEF FROM STAY - 6**

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